

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 166
3264739

BETWEEN	MULLINS SUPERMARKET LIMITED Applicant
AND	DEBORAH HALEY Respondent

Member of Authority:	Rowan Anderson
Representatives:	Matthew Mullins for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions and further information received:	Up to and including 28 February 2024 from the Applicant None from the Respondent
Determination:	21 March 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mullins Supermarket Limited (Mullins) seeks a compliance order relating to an alleged breach of the terms of settlement agreed with Deborah Haley as to an employment relationship problem resolved in accordance with s 149 of the Employment Relations Act 2000 (the Act).

[2] Mullins claims that Ms Haley breached the terms of settlement by failing to pay sums due under the terms of settlement. Mullins seeks a compliance order in terms of ss 137 and 138 of the Act, requiring Ms Haley to comply with the terms of settlement by making payment of the \$1,590.00 settlement sum at a minimum rate of \$50.00 per week, until fully paid.

[3] Ms Haley has not responded to Mullins's claim.

The Authority's investigation

[4] The Authority held a case management conference (CMC) on 15 February 2024. Ms Haley did not attend the CMC.

[5] I am satisfied that Ms Haley has been served with the statement of problem and other relevant notices and documents. This is confirmed by signed courier receipts evidencing receipt of the same by Ms Haley. Ms Haley has not lodged a statement in reply and had not otherwise engaged in the Authority's investigation despite having had the opportunity to do so.

[6] At the CMC on 15 February 2024, following discussion with Mr Mullins, I issued written directions. Those directions included a timetable for the provision of any affidavits and documents and recorded that the matter would be dealt with "on the papers" without the need for an in-person investigation meeting. A timeframe was also included for any objection to be raised as to the directions made. No objection was received.

[7] The following issues required investigation and determination by the Authority:

- (a) Has Ms Haley complied with clause 6 of the terms of settlement signed by the parties on 10 July 2023 (and certified by the mediator on 17 July 2023)?
- (b) If Ms Haley has not complied, should a compliance order be made in terms of s 137 of the Act?

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Ms Haley has not complied with the terms of settlement

[9] Clause 6 of the terms of settlement required Ms Haley to make payment of \$1,590.00 to Mullins at the rate of \$50 per week until the sum was fully paid. I am satisfied based on Mr Mullins's uncontested written statement that no payments have

been received from Ms Haley despite several attempts having been made to have her pay the instalment sums due.

[10] Ms Haley has not responded to Mullins's claims, nor has she responded to or denied Mr Mullins's evidence.

[11] I am satisfied that Ms Haley has not complied with clause 6 of the terms of settlement by failing to make the payments due.

Should a compliance order be made?

[12] Ms Haley has had the opportunity to comply with the terms of settlement but has not done so. It is also apparent from the evidence of Mr Mullins that several attempts have been made to contact Ms Haley to arrange for the payment of the relevant sum by instalments, including at a lesser rate that provided for in the terms of settlement. Despite that, the evidence before the Authority is that Ms Haley has not actively engaged with Mullins, nor has she made any payment.

[13] In all the circumstances I am satisfied that a compliance order should be made requiring Ms Haley to comply with clause 6 of the terms of settlement. The terms of settlement provide for payment by instalment, Mullins is seeking a compliance order on that basis, and I am satisfied that payment should be made by instalment on the basis provided for in the terms of settlement.

Orders

[14] To effect compliance with the terms of settlement, Ms Haley is ordered to make payment to Mullins Supermarket Limited of the settlement sum of \$1,590.00. Ms Haley is to do so by:

- (a) making payment of \$50.00 by no later than Friday 11 April 2024; and
- (b) by making payment of \$50.00 by no later than the Friday of each subsequent week until the sum is fully repaid, with a final payment of \$40.00 to be made by no later than Friday 15 November 2024.

Warning to Ms Haley

[15] Failure by Ms Haley to comply with the Authority's compliance order may result in Mullins applying to the Employment Court for compliance, as permitted by s 138(6) of the Act, and for the Court to exercise its powers under s 140(6), which include

a fine not exceeding \$40,000 or an order that the property of the person in default be sequestered.

Costs

[16] Mullins were not represented and as such there is no issue as to costs.

Rowan Anderson
Member of the Employment Relations Authority